

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DANIEL LEISTEN,

Plaintiff,

v.

CBS BROADCASTING, INC.,
VIACOMCBS, INC., PITTSBURGH
TELEVISION STATION WPCW INC, AND;
AND JOHN DOES,

Defendants.

2:21-CV-00974-CCW

MEMORANDUM ORDER

This case has been referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Local Rule of Civil Procedure 72.

On December 22, 2021, the Magistrate Judge issued a Report and Recommendation, ECF No. 22, recommending that Defendants' Motion to Dismiss, ECF No. 10, be granted and that this action be dismissed with prejudice. Service of the Report and Recommendation ("R&R") was made on the parties, and Plaintiff has filed Objections. *See* ECF No. 23.

As part of his Objections, Plaintiff contends that the Magistrate Judge erred in analyzing all of the Defendants' defamatory publications as a single publication. ECF No. 23 at 1–5. However, even if each of the publications at issue were considered as an individual cause of action, Plaintiff's Complaint nonetheless fails to "allege sufficient facts to raise a reasonable expectation

that discovery will uncover proof of h[is] claims.” *Connolly v. Lane Constr. Corp.*, 809 F.3d 780, 789 (3d Cir. 2016); *see Graham v. Today’s Spirit*, 468 A.2d 454, 457 (Pa. 1983) (finding two tortious acts when a defamatory article was published in two different journals); *see also*, Restatement (Second) of Torts, § 577A cmt. s (Am. L. Inst. 1977) (Comment d.) (“[T]he single publication rule ... does not include separate aggregate publications on different occasions. Thus if the same defamatory statement is published in the morning and evening editions of a newspaper, each edition is a separate single publication and there are two causes of action. The same is true of a rebroadcast of the defamation over radio or television.... In these cases the publication reaches a new group and the repetition justifies a new cause of action.”).

Plaintiff’s defamation claim arises out of media reports in which Defendants allegedly reported that Plaintiff, Daniel Leisten (instead of Plaintiff’s brother, Jeffrey Leisten) was arrested and facing charges for a fatal stabbing in or around May 2020. *See* ECF No. 1 ¶¶ 19–20. The exhibits attached to Plaintiff’s Complaint which show the date of publication (as opposed to his exhibits showing a date of last visit or other measurement) are all dated May 19, 2020—thereby, indicating separate but simultaneous publications of the material. ECF No. 1-2 at 4, 6, 7 (showing publication dates of May 19, 2020). Plaintiff filed his Complaint on July 22, 2021, which is more than one year after May 19, 2020. ECF No. 1. Thus, even if each publication is considered as an individual cause of action with its own 1-year statute of limitations,¹ Plaintiff’s factual allegations surrounding his defamation claim, which arise out of Defendants’ reporting related to a May 2020 incident, do not “raise a right to relief above the speculative level,” *Bell Atl. Corp. v. Twombly*, 550

¹ Although Plaintiff’s Objections allege that the defamatory material was republished after March 2021 thereby creating a new cause of action with its own statute of limitation, a review of the paragraphs in the Complaint cited by Plaintiff do not appear to suggest any republication. *See* ECF No. 23 at 5, 7; ECF No. 1 ¶¶ 24–27.

U.S. 544, 555 (2007) and are not “sufficient ... to state a claim for relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570).

Thus, after a *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation and Objections thereto, it is hereby **ORDERED** that Defendants’ Motion to Dismiss, ECF No. 10, is **GRANTED**, that this action is dismissed with prejudice, and the Magistrate Judge’s Report and Recommendation, ECF No. 22, is adopted as the Opinion of the District Court.

IT IS SO ORDERED.

DATED this 19th day of January, 2022.

BY THE COURT:

/s/ Christy Criswell Wiegand
CHRISTY CRISWELL WIEGAND
United States District Judge

cc (via ECF email notification):

All Counsel of Record